

United States District Court

EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA

VS.

TRENTARGUS RUMANE HOLT

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CRIM NO. 4:07CR164-5

APPEAL NO. 10-40492

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

On April 19, 2010, U.S. District Judge Marcia Crone entered a Memorandum and Order denying the Defendant's motion for reduction in sentence. Defendant submitted a *pro se* notice of appeal that is stamped as filed on May 17, 2010. The final day for filing a timely notice of appeal was May 3, 2010. On July 7, 2010, the Fifth Circuit remanded the case for a determination of whether excusable neglect or good cause existed for the untimely filing of the Defendant's notice of appeal. On September 2, 2010, this matter was referred to the undersigned.

Rule 4(b)(1) of the Federal Rules of Appellate Procedure affords a criminal defendant fourteen (14) days in which to file a notice of appeal. Pursuant to Rule 4(b)(4) of the Federal Rules of Appellate Procedure, a district court may grant an additional thirty (30) days in which to file a notice of appeal upon a finding of excusable neglect or good cause. Since Defendant filed his notice of appeal within the additional thirty (30) day period, the Fifth Circuit remanded the case to this Court on July 7, 2010, for a determination of whether the untimely filing of the notice of appeal was due to excusable neglect or good cause. This Court subsequently entered an Order on September 2, 2010, directing Defendant to file an affidavit with the Court by October 1, 2010, explaining whether the untimely filing of his notice of appeal was due to excusable

neglect or good cause. The Court also ordered Defendant's retained counsel to file a report with the Court explaining his knowledge of this matter.

On September 30, 2010, Defendant's retained counsel filed a report indicating that his representation concluded after sentencing. However, the Court would note that counsel never filed a motion to withdraw.

In the Court's September 2, 2010 Order, the Court ordered Defendant to file an affidavit with the Court by October 1, 2010, explaining whether the untimely filing of his notice of appeal was due to excusable neglect or good cause. The Court's September 2, 2010 Order was received by Defendant on September 15, 2010. Although more than two weeks have passed since Defendant received the Order of this Court, Defendant has failed to file an affidavit with the Court, as ordered. Defendant, therefore, has not offered any explanation as to whether the untimely filing of his notice of appeal was due to excusable neglect or good cause. In light of the foregoing, the Court finds that Defendant's untimely filing of his notice of appeal was not due to excusable neglect or good cause.

RECOMMENDATION

The Court recommends that the Fifth Circuit Court of Appeals be notified of the undersigned's findings that Defendant's untimely filing of his notice of appeal was not due to excusable neglect or good cause.

Within fourteen (14) days after service of the magistrate judge's report, any party may serve and file written objections to the findings and recommendations of the magistrate judge.

28 U.S.C. § 636(b)(1)(c).

Failure to file written objections to the proposed findings and recommendations contained in this report within fourteen days after service shall bar an aggrieved party from *de novo* review by the district court of the proposed findings and recommendations and from appellate review of factual findings accepted or adopted by the district court except on grounds of plain error or manifest injustice. *Thomas v. Arn*, 474 U.S. 140, 148 (1985); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).

SIGNED this 12th day of October, 2010.


AMOS L. MAZZANT
UNITED STATES MAGISTRATE JUDGE